

This meeting has been noticed according to the Brown Act rules. This agenda was posted on Friday, October 8, 2021.



**Ordinance No. 152
Oversight Panel
Members:**

*Susan Schiavone
Jason Campbell
Melodie Chrislock
Marli Melton
Mike Rachel
Kevan Urquhart
Bill Peake
Scott Dick
John Tilley*

MPWMD Contacts:
*General Manager,
David J. Stoldt*

*Administrative Services
Manager, Suresh Prasad*

*Board Clerk,
Joel G. Pablo*

After staff reports have been distributed, if additional documents are produced by the District and provided to the Committee regarding any item on the agenda, they will be made available on the District's website prior to the meeting. Documents distributed at the meeting will be made available upon request and posted to the District's website within five days following the meeting.

AGENDA

**Ordinance No. 152 Citizen's Oversight Panel
of the Monterey Peninsula Water Management District**

Wednesday, October 13, 2021 at 3:00 PM, *Virtual Meeting*

Pursuant to Governor Newsom's Executive Orders N-29-20 and N-33-20, and to do all we can to help slow the spread of COVID-19 (coronavirus), meetings of the Monterey Peninsula Water Management District Board of Directors and committees will be conducted with virtual (electronic) participation only using Zoom.

Join the meeting at this link:

<https://us06web.zoom.us/j/81672681279?pwd=TGtUUGhYbHdwOzcwZUIITFM3a2ZlQT09>

Or access the meeting at: zoom.us

Webinar ID: 816 7268 1279

Meeting password: 10132021

Participate by phone: (669) 900 9128

For detailed instructions on connecting to the Zoom meeting see page 2 of this agenda.

Call to Order / Roll Call

Comments from Public -- *The public may comment on any item within the District's jurisdiction. Please limit your comments to three minutes in length.*

Action Items -- *Public comment will be received on Action Items. Please limit your comments to three minutes in length.*

1. Consider Adoption of July 8, 2021 Committee Meeting Minutes

Discussion Items -- *Public comment will be received on Discussion Items. Please limit your comments to three minutes in length.*

2. Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities
3. Discuss Topics for 2020 Annual Report (*Verbal Report*)
4. Discuss Topics from July 8th Meeting: (a) Allocating Water Supply Charge to Specific Projects; (b) Simplification of Water Supply Charge Report
5. Discuss Performance of District User Fee to Date

Other Items -- *Public comment will be received on Other Items. Please limit your comments to three minutes in length.*

6. Water Supply Project Update (*Verbal Report*)

ADJOURN TO CLOSED SESSION- *As permitted by Government Code Section 54956.9 et seq., the Board may adjourn to closed or executive session to consider matters dealing with pending or threatened litigation, certain personnel matters, or certain property acquisition matters.*

7. Conference with Legal Counsel – The Ordinance No. 152 Citizen's Oversight Panel will confer with district counsel to review pending litigation pursuant to Government Code §54956.9.:

a. Conference with Legal Counsel- Existing Litigation §54956.9(a), Monterey Peninsula Taxpayers' Association, Inc., et al. v. Monterey Peninsula Water Management District, Case No. 21CV003066

ADJOURNMENT

Upon request, MPWMD will make a reasonable effort to provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. MPWMD will also make a reasonable effort to provide translation services upon request. Submit requests by 5:00 pm on Friday, October 8, 2021 to joel@mpwmd.net, or call (831) 658-5652. Alternatively, you may contact Sara Reyes, Administrative Services Division at 831-658-5601.

Instructions for Connecting to the Zoom Meeting

Note: If you have not used Zoom previously, when you begin connecting to the meeting you may be asked to download the app. If you do not have a computer, you can participate by phone.

Begin: Within 10 minutes of the meeting start time from your computer click on this link: <https://us06web.zoom.us/j/81672681279?pwd=TGtUUGhYbHdwQzcyZUIITFM3a2ZlQT09> or paste the link into your browser.

DETERMINE WHICH DEVICE YOU WILL BE USING
(PROCEED WITH ONE OF THE FOLLOWING INSTRUCTIONS)

USING A DESKTOP COMPUTER OR LAPTOP

1. In a web browser, type: <https://www.zoom.us>
2. Hit the enter key
3. At the top right-hand corner, click on "Join a Meeting"
4. Where it says "Meeting ID", type in the Meeting ID# above and click "Join Meeting"
5. Your computer will begin downloading the Zoom application. Once downloaded, click "Run" and the application should automatically pop up on your computer. (If you are having trouble downloading, alternatively you can connect through a web browser – the same steps below will apply).
6. You will then be asked to input your name. It is imperative that you put in your first and last name, as participants and attendees should be able to easily identify who is communicating during the meeting.
7. From there, you will be asked to choose either ONE of two audio options: Phone Call or Computer Audio:

COMPUTER AUDIO

1. If you have built in computer audio settings or external video settings – please click "Test Speaker and Microphone".
2. The client will first ask "Do you hear a ringtone?" •If no, please select "Join Audio by Phone".

- If yes, proceed with the next question:
- 3.The client will then ask “Speak and pause, do you hear a replay?” •If no, please select “Join Audio by Phone”
- If yes, please proceed by clicking “Join with Computer Audio”

PHONE CALL

- 1.If you do not have built in computer audio settings or external video settings – please click “Phone Call”
- 2.Select a phone number based on your current location for better overall call quality.

+1 669-900-9128 (San Jose, CA)	+1 253-215-8782 (Houston, TX)
+1 346-248-7799 (Chicago, IL)	+1 301-715-8592 (New York, NY)
+1 312-626-6799 (Seattle, WA)	+1 646-558-8656 (Maryland)

- 3.Once connected, it will ask you to enter the Webinar ID No. and press the pound key
- 4.It will then ask you to enter your participant ID number and press the pound key.
- 5.You are now connected to the meeting.

USING AN APPLE/ANDROID MOBILE DEVICE OR SMART PHONE

- 1.Download the Zoom application through the Apple Store or Google Play Store (the application is free).
- 2.Once download is complete, open the Zoom app.
- 3.Tap “Join a Meeting”
- 4.Enter the Meeting ID number
- 5.Enter your name. It is imperative that you put in your first and last name, as participants and attendees should be able to easily identify who is communicating during the meeting.
- 6.Tap “Join Meeting”
- 7.Tap “Join Audio” on the bottom left hand corner of your device
- 8.You may select either ONE of two options: “Call via Device Audio” or “Dial in”

DIAL IN

- 1.If you select “Dial in”, you will be prompted to select a toll-free number to call into.
2. Select a phone number based on your current location for better overall call quality.

+1 669-900-9128 (San Jose, CA)	+1 253-215-8782 (Houston, TX)
+1 346-248-7799 (Chicago, IL)	+1 301-715-8592 (New York, NY)
+1 312-626-6799 (Seattle, WA)	+1 646-558-8656 (Maryland)
- 3.The phone will automatically dial the number, and input the Webinar Meeting ID No. and your Password.
4. Do not hang up the call, and return to the Zoom app
5. You are now connected to the meeting.

Presenting Public Comment

Receipt of Public Comment – the Chair will ask for comments from the public on all items. Limit your comment to 3 minutes but the Chair could decide to set the time for 2 minutes.

- (a) Computer Audio Connection: Select the “raised hand” icon. When you are called on to speak, please identify yourself.
- (b) Phone audio connection **with** computer to view meeting: Select the “raised hand” icon. When you are called on to speak, push *6 to unmute and please identify yourself.
- (c) Phone audio connection only: Press *9. Wait for the clerk to unmute your phone and then identify yourself and provide your comment. Press *9 to end the call.

Submit Written Comments

If you are unable to participate via telephone or computer to present oral comments, you may also submit your comments by e-mailing them to comments@mpwmd.net with one of the following subject lines "PUBLIC COMMENT ITEM #" (insert the item number relevant to your comment) or "PUBLIC COMMENT – ORAL COMMUNICATIONS". Comments must be received by 12:00 p.m. on Wednesday, October 13, 2021. Comments submitted by noon will be provided to the Board of Directors and compiled as part of the record of the meeting.

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ORDINANCE NO. 152 OVERSIGHT PANEL

ACTION ITEM

1. CONSIDER ADOPTION OF JULY 8, 2021 COMMITTEE MEETING MINUTES

Meeting Date: October 13, 2021

From: David J. Stoldt
General Manager

Prepared By: Joel G. Pablo

CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378

SUMMARY: Draft minutes of the July 8, 2021 committee meeting (**Exhibit 1-A**) are attached.

RECOMMENDATION: Consider adoption of the July 8, 2021 committee meeting minutes.

EXHIBIT

1-A Draft Minutes of July 8, 2021 Committee Meeting



EXHIBIT 1-A

DRAFT MEETING MINUTES

Ordinance No. 152 Citizen's Oversight Panel of the Monterey Peninsula Water Management District July 8, 2021

*Pursuant to Governor Newsom's Executive Orders N-29-20 and N-33-20,
the meeting was conducted with virtual participation via Zoom.*

Call to Order The meeting was called to order at 1:00 pm via Zoom by David J. Stoldt,
General Manager / Chair to the Panel.

Roll Call

Committee Members Present:

Susan Schiavonne
Jason Campbell
Bill Peake
Melodie Chrislock
Marli Melton
Mike Rachel
Kevan Urquhart
John Tilley
Scott Dick (*Joined at 1:06 PM*)

MPWMD Staff members present:

David J. Stoldt, General Manager / Chair to the Panel
Suresh Prasad, Administrative Services
Manager/CFO
Joel G. Pablo, Board Clerk

District Counsel Present:

David Laredo, Esq. with De Lay and Laredo

Committee Members Absent: None

Comments from the Public:

Opened Public Comment; No Public Comment Received.

Action Items

1. **Consider Adoption of the Committee Meeting Minutes of March 24, 2021**

No public comment were directed to the panel for Action Item No. 1.

A motion was made by Schiavonne and seconded by Melton to approve the draft committee meeting minutes of March 24, 2021. The motion passed on a roll-call vote of 7-Ayes (Schiavonne, Campbell, Chrislock, Peake, Melton, Rachel and Urquhart), 0-Noes, 1-Abstain (Tilley) and 1-Absent (Dick).

Discussion Items

2. **Review of Revenue and Expenditures of Water Supply Charge Related to Water Supply Activities**

David J. Stoldt, General Manager/Panel Chair provided introductory remarks. Suresh Prasad, Administrative Services Manager/CFO reviewed Exhibits 2-A and 2-B that were submitted with the committee packet and answered questions from the committee.

Prasad responded to questions from the Panel:

- a. *In response to Melton:* Prasad explained that the District reimbursement lines don't get caught up until after the close of the fiscal year and mentioned that panel will receive a full picture of the fiscal year or the last two months (May and June, 2021) at the next regularly scheduled meeting.
- b. *John Tilley* stated that the user fee should be set aside from the committee's discussions and must hone-in on the Water Supply Charge and retiring said charge.
- c. *In response to Schiavonne:* Prasad mentioned that water supply receipts are collected by the County Treasurer- Tax Collector's (TTC) office and reimbursed to the district. He explained that fluctuations do occur when a taxpayer fails to pay their bill on time and collection of and reimbursement total receipts may be reflected in the following fiscal year.
- d. *In response to Campbell:* Prasad explained due to and in response to the COVID-19 situation, the district purposely budgeted for \$3.3 million for the Water Supply Charge as opposed to \$3.4 million as done in prior years.

Stoldt and Prasad explained they will together on discussions had among the group and seek to produce further simplification over material presented at future meetings.

No public comment received on this matter.

3. **Review Adopted Budget and Capital Improvement Plan for Fiscal Year 2021-2022**

Suresh Prasad, Administrative Services Manager/CFO reviewed Exhibits 3-A that were submitted with the committee packet and answered questions from the committee. David J. Stoldt, General Manager provided an overview of project expenses in relation to the water supply charge collected by the district. He explained the project expenditures exceed that of the \$3.4 million water supply charge collected by the district and are being funded by other sources.

funds are being drawn from other sources to cover various projects.

No public comment received on this matter.

4. **Discuss Performance of District User Fee to Date**

Prasad reviewed Exhibits 4-A that were submitted with the committee packet and answered questions from the committee.

No public comment received on this matter.

Other Items

5. **Water Supply Project Update**

David J. Stoldt, General Manager made the following points and answered questions from the Panel:

- (a) Following the District's complaint to the CPUC, Cal-Am has agreed to negotiate a Water Purchase Agreement for Pure Monterey Water Expansion.
- (b) Pure Water Monterey, Base Project: Two New Deep Injection Wells being added and scheduled for completion in December, 2021 bringing the total to four deep injection wells.
- (c) Funding Sources for PWM Expansion will be funded through a combination of state revolving funds, Federal WIFIA loan and meeting any shortfalls through internal borrowing.
- (d) Cal-Am is working on and plans to file a complete application to the CA Coastal Commission by November, 2021.
- (e) Aquifer Storage and Recovery is nearing completion.
- (g) Provided an Update on the District's Application on a Boundary Adjustment, District

Annexation and proposed activation of latent powers with LAFCO of Monterey County. He stated, a review for application completeness is underway and will be notified by LAFCO on the next hearing date. In addition, LAFCO staff has hired a consultant to conduct a review of all the published material as it relates to the District's application.

Adjourn: Chair Stoldt adjourned the meeting at 2:25 PM

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ORDINANCE NO. 152 OVERSIGHT PANEL

DISCUSSION ITEM

2. REVIEW OF REVENUE AND EXPENDITURES OF WATER SUPPLY CHARGE RELATED TO WATER SUPPLY ACTIVITIES

Meeting Date: October 13, 2021

From: Suresh Prasad
Administrative Services Manager/
Chief Financial Officer

Prepared By: Joel G. Pablo

CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378

SUMMARY: Please review **Exhibit 2-A, 2-B** and **2-C** submitted for discussion at the October 13, 2021, committee meeting.

EXHIBITS

- 2-A** Water Supply Charge Receipts
- 2-B** Water Supply Charge Availability Analysis
- 2-C** Water Supply Charge Report (Water Supply Fund)

EXHIBIT 2-A

Monterey Peninsula Water Management District

Water Supply Charge Receipts

	FY 2020-2021 Revised Budget	FY 2020-2021 Unaudited Actuals	FY 2019-2020 Revised Budget	FY 2019-2020 Audited Actuals
Water Supply Charge	\$3,300,000	\$3,422,117	\$3,400,000	\$3,355,193
Percentage		103.7%		98.7%

EXHIBIT 2-B

Monterey Peninsula Water Management District

Water Supply Charge Availability Analysis

	FY 2020-2021 Revised Budget	FY 2020-2021 Unaudited Actuals	FY 2019-2020 Revised Budget	FY 2019-2020 Audited Actuals
Beginning Fund Balance		\$7,506,595		\$8,584,956
Water Supply Charge	\$3,300,000	\$3,422,117	\$3,400,000	\$3,355,193
Capacity Fee	400,000	474,040	500,000	575,511
PWM Water Sales	4,800,000	5,908,182	-	0
Project Reimbursement	1,125,700	590,240	845,700	1,220,812
Property Taxes	1,850,000	2,085,714	1,800,000	1,945,614
User Fees	994,950	843,136	720,000	789,399
Interest	100,000	47,212	115,000	193,985
Reclamation Project	520,000	532,602	-	0
Other	5,000	3,322	5,000	2,192
Total Revenues	\$13,095,650	\$13,906,565	\$7,385,700	\$8,082,706
Direct Personnel	1,278,734	1,356,614	1,252,304	1,313,679
Direct Supplies & Services*	120,219	113,806	112,365	108,649
Legal	220,000	102,623	220,000	99,004
Project Expenditures [see below]	15,217,400	10,755,063	11,403,550	6,699,372
Project Expenditures-Reimbursements [see below]	954,700	440,685	754,700	296,513
Fixed Asset Purchases	63,000	12,646	61,600	14,927
Contingencies	23,100	0	23,100	0
Debt Service	230,000	219,136	230,000	219,136
Election Expense	66,000	39,477	-	0
Indirect Labor*	183,066	183,066	189,196	189,196
Indirect Supplies & Services*	244,081	231,062	228,135	220,591
Reserve	1,097,850	0	77,100	0
Total Expenditures	\$19,698,150	\$13,454,178	\$14,552,050	\$9,161,067
Net Revenue Over Expenses**	(\$6,602,500)	\$452,387	(\$7,166,350)	(\$1,078,361)
Ending Fund Balance		\$7,958,982		\$7,506,595
<u>Project Expenditures</u>	<u>FY 2020-2021 Revised Budget</u>	<u>FY 2020-2021 Unaudited Actuals</u>	<u>FY 2019-2020 Revised Budget</u>	<u>FY 2019-2020 Audited Actuals</u>
PWM Project	\$4,212,000	\$1,233,201	\$3,110,000	\$1,687,304
PWM Project - Expansion	\$0	\$0	\$0	\$731,337
PWM Project - Operating Reserve	\$1,150,000	\$751,683	\$0	\$0
PWM Project - Water Purchase	\$4,800,000	\$6,041,594	\$0	\$0
ASR Phase I	\$3,922,400	\$2,448,823	\$6,108,000	\$2,831,248
Reimbursement Projects	\$954,700	\$440,685	\$754,700	\$296,513
Cal-Am Desalination Project	\$50,000	\$0	\$50,000	\$32,416
ASR Expansion	\$80,000	\$0	\$0	\$350
Other Water Supply Projects - IFIM/GSFlow	\$0	\$7,433	\$32,300	\$23,048
Local Water Projects	\$307,000	\$0	\$200,000	\$0
Measure J/Feasibility Study	\$192,000	\$198,200	\$384,000	\$274,507
Drought Contingency Plan	\$0	\$0	\$0	\$0
Los Padres Long Term Plan	\$390,000	\$27,893	\$328,000	\$82,720
PB Reclamation Project	\$0	\$0	\$1,000,000	\$1,000,000
Other Project Expenditures	\$114,000	\$46,236	\$191,250	\$36,442
Total Project Expenses	\$16,172,100	\$11,195,748	\$12,158,250	\$6,995,885

*: Indirect costs as percent of Water Supply Charge 12.9% 12.1% 12.3% 12.2%

Recent Activities:

ASR Chemical Building
Measure J/Feasibility Study
PB Reclamation Project Financing
PWM Reserve Water
PWM Water Purchase

** Deficit balances are paid from combination of loan, interfund borrowing, line of credit proceeds, or fund balance

EXHIBIT 2-C

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT Water Supply Charge Report (Water Supply Fund)

	Fiscal Year Ending										
	2021*	2020	2019	2018	2017	2016	2015	2014	2013	Total	
Revenue											
Water Supply Charge	\$ 3,422,117	\$ 3,355,193	\$ 3,410,398	\$ 3,405,008	\$ 3,391,354	\$ 3,382,389	\$ 3,327,701	\$ 3,412,207	\$ 3,400,873	\$ 30,507,240	
Expenditures											
Personel:											
Salaries	\$ 1,050,040	\$ 1,034,678	\$ 1,025,894	\$ 918,724	\$ 824,182	\$ 815,048	\$ 790,486	\$ 768,299	\$ 734,454	\$ 7,961,805	
Employee Benefits and other	\$ 489,640	\$ 468,197	\$ 415,047	\$ 367,183	\$ 338,110	\$ 308,289	\$ 295,699	\$ 321,168	\$ 331,552	\$ 3,334,885	
Services and Supplies:											
Project expenditures	\$ 11,195,748	\$ 5,995,887	\$ 2,284,777	\$ 1,850,300	\$ 3,595,023	\$ 5,384,999	\$ 3,373,391	\$ 6,465,907	\$ 2,294,196	\$ 42,440,228	
Operating expenditures	\$ 285,380	\$ 236,163	\$ 240,055	\$ 154,660	\$ 143,059	\$ 166,695	\$ 344,266	\$ 143,720	\$ 130,241	\$ 1,844,239	
Professional fees	\$ 201,588	\$ 192,081	\$ 313,446	\$ 357,070	\$ 214,106	\$ 378,388	\$ 284,904	\$ 304,978	\$ 363,081	\$ 2,609,642	
Captial outlay	\$ 12,646	\$ 14,927	\$ 76,477	\$ 64,404	\$ 17,334	\$ 60,530	\$ 38,752	\$ 35,919	\$ 15,944	\$ 336,933	
Debt Service:											
Principal	\$ 96,405	\$ 93,157	\$ 90,175	\$ 86,953	\$ 83,881	\$ 80,508	\$ 78,059	\$ 75,215	\$ 38,368	\$ 722,721	
Interest and other charges	\$ 122,731	\$ 125,979	\$ 128,961	\$ 132,183	\$ 137,086	\$ 138,627	\$ 147,150	\$ 143,921	\$ 41,801	\$ 1,118,439	
Total Expenditures	\$ 13,454,178	\$ 8,161,069	\$ 4,574,832	\$ 3,931,477	\$ 5,352,781	\$ 7,333,084	\$ 5,352,707	\$ 8,259,127	\$ 3,949,637	\$ 60,368,892	
Difference [surplus/(deficit)]	\$ (10,032,061)	\$ (4,805,876)	\$ (1,164,434)	\$ (526,469)	\$ (1,961,427)	\$ (3,950,695)	\$ (2,025,006)	\$ (4,846,920)	\$ (548,764)	\$ (29,861,652)	
Other Revenue Sources											
Project reimbursements	\$ 1,122,842	\$ 1,220,812	\$ 526,867	\$ 5,583,786	\$ 693,848	\$ 429,075	\$ 712,002	\$ 2,093,013	\$ 2,032,924	\$ 14,415,169	
PWM Water Sales	\$ 5,908,182	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,908,182	
Grants	\$ -	\$ -	\$ 200,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38,342	\$ 238,342	
Difference [surplus/(deficit)]	\$ (3,001,037)	\$ (3,585,064)	\$ (437,567)	\$ 5,057,317	\$ (1,267,579)	\$ (3,521,620)	\$ (1,313,004)	\$ (2,753,907)	\$ 1,522,502	\$ (9,299,959)	

Source: MPWMD Audited Finacial Statement

* 2021 unaudited figures

ORDINANCE NO. 152 OVERSIGHT PANEL

DISCUSSION ITEM

4. DISCUSS TOPICS FROM JULY 8TH MEETING: (A) ALLOCATING WATER SUPPLY CHARGE TO SPECIFIC PROJECTS; (B) SIMPLIFICATION OF WATER SUPPLY CHARGE REPORT

Meeting Date: October 13, 2021

From: Suresh Prasad
Administrative Services Manager/
Chief Financial Officer

Prepared By: Joel G. Pablo

CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378

SUMMARY: The Panel will discuss topics from the July 8th Meeting to include:

- (a) Allocating Water Supply Charge to Specific Projects; and
- (b) Simplification of Water Supply Charge Report

Please review **Exhibit 4-A** submitted for discussion at the October 13, 2021, committee meeting.

EXHIBIT

4-A Water Supply Charge Report (Water Supply Fund)

EXHIBIT 4-A

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT Water Supply Charge Report (Water Supply Fund)

	Fiscal Year Ending										
	2021*	2020	2019	2018	2017	2016	2015	2014	2013	Total	
Revenue											
Water Supply Charge	\$ 3,422,117	\$ 3,355,193	\$ 3,410,398	\$ 3,405,008	\$ 3,391,354	\$ 3,382,389	\$ 3,327,701	\$ 3,412,207	\$ 3,400,873	\$ 30,507,240	
Expenditures											
Personel:											
Salaries	\$ 1,050,040	\$ 1,034,678	\$ 1,025,894	\$ 918,724	\$ 824,182	\$ 815,048	\$ 790,486	\$ 768,299	\$ 734,454	\$ 7,961,805	
Employee Benefits and other	\$ 489,640	\$ 468,197	\$ 415,047	\$ 367,183	\$ 338,110	\$ 308,289	\$ 295,699	\$ 321,168	\$ 331,552	\$ 3,334,885	
Services and Supplies:											
Project expenditures	\$ 11,195,748	\$ 5,995,887	\$ 2,284,777	\$ 1,850,300	\$ 3,595,023	\$ 5,384,999	\$ 3,373,391	\$ 6,465,907	\$ 2,294,196	\$ 42,440,228	
Operating expenditures	\$ 285,380	\$ 236,163	\$ 240,055	\$ 154,660	\$ 143,059	\$ 166,695	\$ 344,266	\$ 143,720	\$ 130,241	\$ 1,844,239	
Professional fees	\$ 201,588	\$ 192,081	\$ 313,446	\$ 357,070	\$ 214,106	\$ 378,388	\$ 284,904	\$ 304,978	\$ 363,081	\$ 2,609,642	
Captial outlay	\$ 12,646	\$ 14,927	\$ 76,477	\$ 64,404	\$ 17,334	\$ 60,530	\$ 38,752	\$ 35,919	\$ 15,944	\$ 336,933	
Debt Service:											
Principal	\$ 96,405	\$ 93,157	\$ 90,175	\$ 86,953	\$ 83,881	\$ 80,508	\$ 78,059	\$ 75,215	\$ 38,368	\$ 722,721	
Interest and other charges	\$ 122,731	\$ 125,979	\$ 128,961	\$ 132,183	\$ 137,086	\$ 138,627	\$ 147,150	\$ 143,921	\$ 41,801	\$ 1,118,439	
Total Expenditures	\$ 13,454,178	\$ 8,161,069	\$ 4,574,832	\$ 3,931,477	\$ 5,352,781	\$ 7,333,084	\$ 5,352,707	\$ 8,259,127	\$ 3,949,637	\$ 60,368,892	
Difference [surplus/(deficit)]	\$ (10,032,061)	\$ (4,805,876)	\$ (1,164,434)	\$ (526,469)	\$ (1,961,427)	\$ (3,950,695)	\$ (2,025,006)	\$ (4,846,920)	\$ (548,764)	\$ (29,861,652)	
Other Revenue Sources											
Project reimbursements	\$ 1,122,842	\$ 1,220,812	\$ 526,867	\$ 5,583,786	\$ 693,848	\$ 429,075	\$ 712,002	\$ 2,093,013	\$ 2,032,924	\$ 14,415,169	
PWM Water Sales	\$ 5,908,182	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,908,182	
Grants	\$ -	\$ -	\$ 200,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38,342	\$ 238,342	
Difference [surplus/(deficit)]	\$ (3,001,037)	\$ (3,585,064)	\$ (437,567)	\$ 5,057,317	\$ (1,267,579)	\$ (3,521,620)	\$ (1,313,004)	\$ (2,753,907)	\$ 1,522,502	\$ (9,299,959)	

Source: MPWMD Audited Financial Statement

* 2021 unaudited figures

ORDINANCE NO. 152 OVERSIGHT PANEL

DISCUSSION ITEM

5. DISCUSS PERFORMANCE OF DISTRICT USER FEE TO DATE

Meeting Date: October 13, 2021

From: Suresh Prasad
Administrative Services Manager/
Chief Financial Officer

Prepared By: Joel G. Pablo

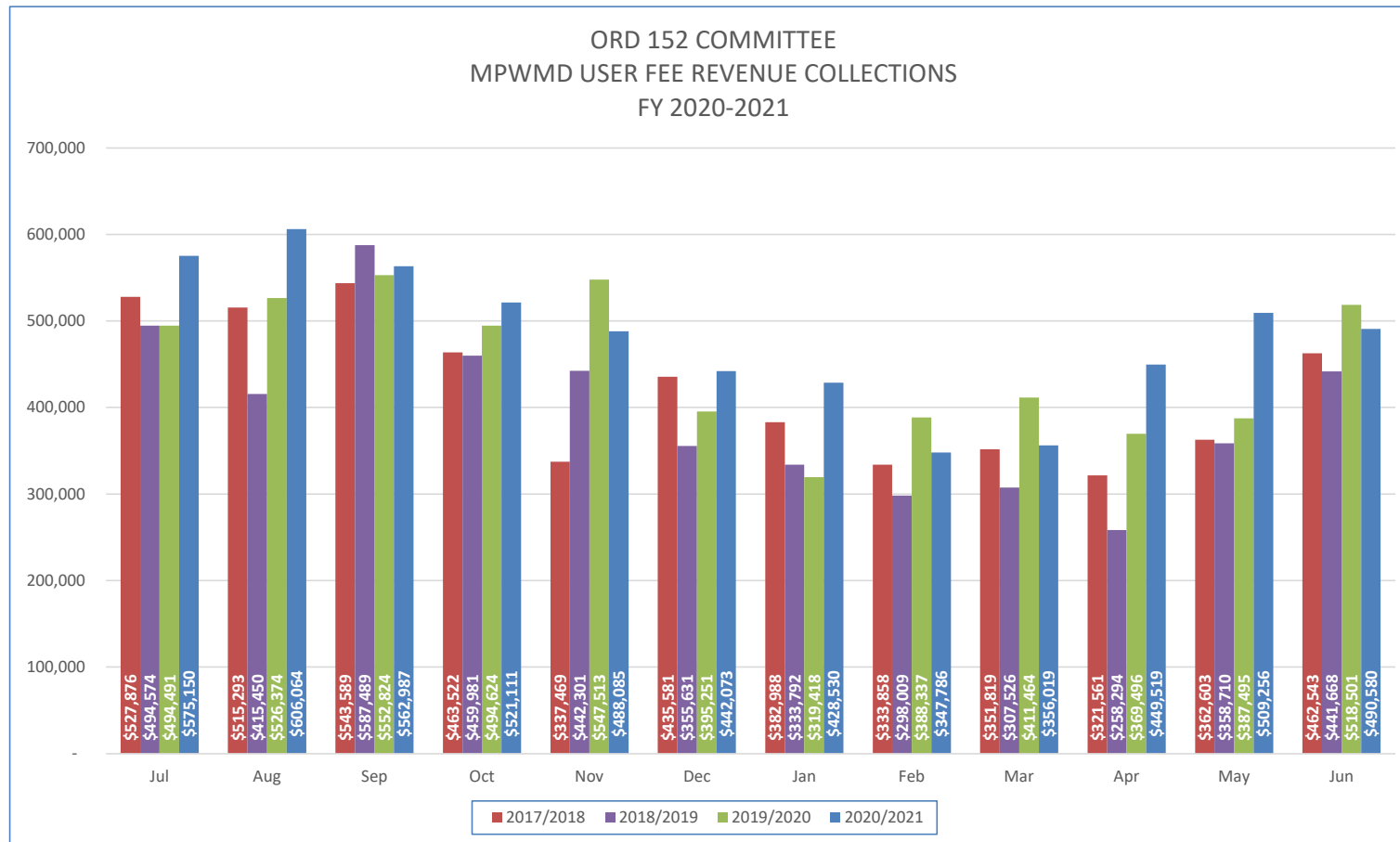
CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378

SUMMARY: Attached for your review in advance of the October 13, 2021 committee meeting is **Exhibit 5-A**.

EXHIBIT

5-A MPWMD User Fee Revenue Collections FY 2020-2021

EXHIBIT 5-A



User Fee Collections:

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
2017/2018	527,876	515,293	543,589	463,522	337,469	435,581	382,988	333,858	351,819	321,561	362,603	462,543	\$ 5,038,701
2018/2019	494,574	415,450	587,489	459,981	442,301	355,631	333,792	298,009	307,526	258,294	358,710	441,668	\$ 4,753,426
2019/2020	494,491	526,374	552,824	494,624	547,513	395,251	319,418	388,337	411,464	369,496	387,495	518,501	\$ 5,405,787
2020/2021	575,150	606,064	562,987	521,111	488,085	442,073	428,530	347,786	356,019	449,519	509,256	490,580	\$ 5,777,158
Var (%)	16.31%	15.14%	1.84%	5.35%	-10.85%	11.85%	34.16%	-10.44%	-13.48%	21.66%	31.42%	-5.38%	6.87%

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Attorneys for Petitioners/Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

MONTEREY PENINSULA TAXPAYERS'
ASSOCIATION, INC., a California nonprofit
corporation; and RICHARDS J. HEUER III, an
individual,

Petitioners and Plaintiffs,

v.

THE MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT, a California
public agency; and DOES through 10,

Respondents and Defendants.

Case No. 21CV003066

**VERIFIED PETITION FOR WRIT OF
MANDATE**

and

**COMPLAINT FOR DECLARATORY
RELIEF**

Petitioners and Plaintiffs Monterey Peninsula Taxpayers’ Association, Inc. and Richards J. Heuer III (“Petitioners”) bring this action by and through their undersigned counsel and allege as follows:

SUMMARY OF ACTION

1. Petitioners challenge the Monterey Peninsula Water Management District's ("District's") continued imposition of a water supply charge established and authorized by Ordinance No. 152 on June 27, 2012 (the "Water Supply Charge"). Section 10 of Ordinance No. 152 requires the District to reduce the Water Supply Charge in the event it reinstated a User Fee it previously collected through California-American Water Company ("Cal-Am"), an investor-owned utility. In 2016, following a California Supreme Court decision, the District reinstated the User Fee. But the District did not cease or reduce the Water Supply Charge as Ordinance 152 requires. It continues to impose the full amount of the Water Supply Charge on property owners within the County. Petitioners seek a writ of mandate and related relief commanding the District to cease the further collection of the Water Supply Charge (or to reduce it by the amount of the User Fee) because continued collection of the charge violates Ordinance No. 152 and Proposition 218.

PARTIES

2. Petitioner Monterey Peninsula Taxpayers' Association, Inc. ("MPTA") is a California nonprofit corporation with its primary place of operations in Monterey County. Its purpose and objective, *inter alia*, are to take appropriate steps to keep taxes as low as possible consistent with efficiency, progress and development and to sponsor, sanction, promote, and assist movements in Monterey County for the conservation of tax monies and the efficient use thereof. Its members are subject to the User Fee and Water Supply Charge at issue herein.

3. Petitioner Richards J. Heuer III resides, and has resided at all relevant times, in Monterey, California. Petitioner is a customer of Cal-Am and, during the relevant time period when it was in effect, has paid the District's User Fee collected by Cal-Am. In addition, he also pays the Water Supply Charge imposed by the District through his property tax bill.

4. Defendant Monterey Peninsula Water Management District is a public agency

///

1 organized and existing under the Monterey Peninsula Water Management District Law (See
2 West's Water Code Appendix, Chapter 118 (uncodified).) It is an "agency" and "local
3 government" subject to Proposition 218's mandates. (See Cal. Const., art.¹ XIII C, § 1, subd. (b);
4 art. XIII D, § 2, subd. (a).) It is governed by a seven-person board of directors ("Board").

5 5. Petitioners are unaware of the true names and capacities of respondents/
6 defendants sued herein as DOES 1 through 10, inclusive, and therefore sue those respondents/
7 defendants by such fictitious names. They are informed and believe, and thereon allege, that each
8 of said fictitiously-named respondents/defendants is in some manner responsible for the acts,
9 violations, and injuries alleged herein. They will amend this petition and complaint to allege the
10 true names and capacities of said fictitiously-named respondents/defendants when the same has
11 been ascertained.

12 6. Petitioners are informed and believe, and thereon allege, that at all times herein
13 mentioned, each of the respondents/defendants was the agent, employee, representative, partner,
14 joint venturer, and/or alter ego of each of the other respondents/defendants and, in doing the
15 things alleged herein, was acting within the course and scope of such agency, employment,
16 representation, on behalf of such partnership or joint venture, and/or as such alter ego, with the
17 authority, permission, consent, and/or ratification of each of the other respondents/defendants.

18 **GENERAL ALLEGATIONS**

19 7. Water service on the Monterey Peninsula is principally supplied by Cal-Am, an
20 investor-owned water supplier, which is regulated by the California Public Utilities Commission
21 ("PUC"). Cal-Am owns a water supply, storage, and distribution system on the Monterey
22 Peninsula, through which it provides water to over 100,000 residents, including in Carmel-by-the-
23 Sea, Monterey, Pacific Grove, Seaside, Del Rey Oaks, and Sand City, as well as some
24 unincorporated areas of Monterey County.

25 8. Because Cal-Am is not a government agency, in 1977 the Legislature created the
26 District "to carry out such functions which only can be effectively performed by government,
27 including, but not limited to, management and regulation of the use, reuse, reclamation,

28 ¹ All references to "art." herein are to the California Constitution.

1 conservation of water and bond financing of public works project.” (Wat. Code App. § 118-2.)
2 The Legislature conferred on the District broad powers to manage and regulate water use and
3 distribution in Monterey Peninsula area. (*Id.* at §§ 301-494, pp. 1686-1712.)

4 9. Beginning in 1983 and at various times as described further herein, the District
5 imposed a User Fee on Cal-Am customers and contracted with Cal-Am to include this fee on bills
6 to its customers. Cal-Am collects and remits the User Fee to the District.

7 10. In 2009, Cal-Am sought the PUC’s approval for a rate increase. In or around
8 March 2011, in connection with that request, the PUC ruled that Cal-Am could no longer collect
9 the User Fee for the District. Cal-Am ceased the collection shortly thereafter. According to the
10 District, at the time, the User Fee was the source of approximately 46% (or \$3.7 million) of the
11 District’s annual revenues, with the remainder derived from property taxes, permit fees,
12 connection charges, and other sources.

13 11. Having lost almost half of its annual revenues as a result of the PUC’s ruling, the
14 District determined to replace the invalidated User Fee with a new fee, a Water Supply Charge,
15 which would be added to the property tax bill of tens of thousands of Monterey property owners
16 who receive water from Cal-Am. In April 2012, the District mailed a notice to property owners
17 advising that it would conduct a public hearing to consider a Water Supply Charge at a public
18 hearing on June 12, 2012.

19 12. In the meantime, the District had retained a rate consultant Bartle Wells Associates
20 (“BWA”) to prepare a rate study in furtherance of its desire to impose a Water Supply Charge. On
21 April 12, 2012, BWA issued a “Technical Memorandum” that stated: “Until recently, the District
22 funded its activities through a user fee collected from Cal-Am customers and other water system
23 customers on the customer bills. The collection of the user fee was recently eliminated by a ruling
24 of the California Public Utilities Commission (CPUC) in the General Rate Case of Cal-Am. To
25 continue its activities, the District must now develop a new mechanism for collecting fees.” (See
26 p. 1.)

27 13. The Technical Memorandum also concluded that “[i]n order to maintain fund
28 reserve balances, meet costs, and to fund new water supply projects, the District will need to

1 recover \$3.7 million annually in user fee revenues” and stated that the District “must restore the
2 user fee revenues to meet operating and capital expenses, and to fund new water supply
3 activities.” (See pp. 3, 6.) On April 12, 2012, the Board adopted the Technical Memorandum.

4 14. At the June 12, 2012 public hearing for the Board’s consideration of the Water
5 Supply Charge, members of the public mounted a vigorous opposition; thousands of written
6 protests were submitted. The Board counted 10,343 valid written protests from a possible 30,509
7 eligible parcels.

8 15. In the face of the public outcry, the Board twice continued the hearing to consider
9 the Water Supply Charge: once to June 19, 2012, and then again to June 27, 2012. During that
10 period, District staff communicated or met with at least eight groups², including MPTA, to
11 consider their concerns and to attempt to reach agreement in order to avoid litigation.

12 16. At the June 27, 2012 continued hearing, District staff gave a slideshow
13 presentation which reflected “Topics of Compromise & Agreement” referring to its discussions
14 and communications with the community groups. One of the items identified was “stronger
15 ‘sunset’ provisions.” Staff also presented “Potential Modifications to Ordinance No. 152”
16 (Handout 3) which included proposed language for sunset clauses.

17 17. At the June 27, 2012 continued hearing, the Board adopted Ordinance No. 152
18 which incorporated the modifications set forth in Handout 3. Ordinance No. 152 imposed a Water
19 Supply Charge on property owners via a meter fee (based on meter size) and a water usage fee
20 (based on type and size of structure). Ordinance No. 152 is attached hereto as **Exhibit A**.

21 18. Ordinance No. 152 states: “The purpose of this Ordinance is to replace and
22 augment the former charge collected by CAW [Cal-Am] on its bills to water customers with a
23 supply charge collected from owners of parcels that receive from the District through CAW’s
24 distribution system.” (See Ex. A, Findings, ¶ 10.) Consistent with this purpose, the terms of the

25 _____
26 ² In addition to MPTA, the District met with Monterey County Association of Realtors, Coalition
27 of Peninsula Businesses, Monterey County Republican Party (Dist. 5), Monterey Peninsula
28 Chamber of Commerce, Citizens for Public Water, Carmel Valley Association, Monterey
Peninsula Regional Water Authority. The Monterey County Association of Realtors retained
counsel who transmitted a critique of the Technical Memorandum prepared by another rate
consultant, Raftelis Financial Consultants, Inc.

1 Ordinance state: “**Notwithstanding any other provision of this Ordinance, the District shall**
2 **not collect a water supply charge pursuant to this Ordinance: ... (b) to the extent alternative**
3 **funds are available via a charge collected on the California American Water Company**
4 **bill....**” (See Ex. A, § 10.) In other words, if the then-invalidated User Fee was reinstated – or
5 some other fee was instituted and collected through Cal-Am’s water bills – then the amount
6 collected via the Water Supply Charge would be reduced pro rata from the fees collected from
7 Cal-Am’s bills. This provision – which placed an ironclad restriction on the District’s ability to
8 charge the full amount of the Water Supply Charge – was forged through compromise and public
9 participation, and adopted by the Board to mollify angry constituents.

10 19. The District has no discretion to disregard Ordinance No. 152, section 10’s
11 provisions. In fact, one of the other modifications presented in Handout 3 that the Board
12 considered and ultimately adopted was the restriction codified in section 13 of Ordinance 152.
13 Section 13 provides that the Board may not amend any part of Ordinance No. 152 unless it
14 conducts another public hearing, mails notice, and allows for protests (as required by article XIII
15 D, section 6, subdivision (a).) The only exceptions are (a) to suspend the Water Supply Charge,
16 (b) reduce its rate, or (c) repeal the ordinance in its entirety. In order words, the District agreed to
17 not repeal or amend the sunset provisions (a power it would normally hold) without an entirely
18 new Proposition 218 process.

19 20. Ordinance 152 became effective on July 1, 2012. That same month the District
20 published Frequently Asked Questions [attached hereto as **Exhibit B**] informing the public about
21 the Water Supply Charge that would be appearing on their property tax bills. The document
22 explained:

23 **1. Why is this charge needed?**

24 *a. When the California Public Utilities Commission (CPUC) took away the*
25 *collection of the MPWMD user fee through the Cal Am bill, the District was left with a*
26 *\$3.7 million gap in its budget... Without a replacement of that revenue source, the*
27 *District does not have the ability to fund development of much-needed water supply*
28 *projects.*

1 **2. What was wrong with the old user fee and collection method?**

2 a. The CPUC disallowed the collection of the District's user fee to be
3 passed through on the Cal Am bill. The judge agreed that the user fee was legal,
4 but stated that she would disallow the charge to be collected on the Cal Am bill.

5 ***

6 **14. Is there a sunset date for the charge?**

7 a. The rate ordinance specifies that the fee will be required to sunset when
8 the purpose for the fee no longer exists. ... Additionally, no supply charge shall be
9 collected if alternative funds become available via a charge on the Cal Am bill.
 (underlining added.)

10 21. After the District began collecting the Water Supply Charge, it continued to
11 challenge the PUC's decision that prevented it from collecting the User Fee. In February 2013, it
12 filed a Petition for Review of the PUC's decision before the California Supreme Court. The
13 Supreme Court granted review and on January 25, 2016, issued an opinion setting aside the
14 PUC's decision. (*Monterey Peninsula Water Management Dist. v. California Public Utilities*
15 *Com.* (2016) 62 Cal.4th 693.)

16 22. Although the District had replaced the User Fee by collecting the Water Supply
17 Charge, it nevertheless acted to reinstate the User Fee following the Supreme Court's ruling.
18 Counsel for the District opined in a March 16, 2016 memorandum that, with respect to the User
19 Fee, the District need not comply with Proposition 218's mandates (notice, hearing, protest
20 rights) if the User Fee was based on fee ordinances that either pre-existed Proposition 218 or had
21 already been subjected to Proposition 218's requirement. The memorandum concluded that the
22 two components of the User Fee met those requirements.

23 23. On March 21, 2016, the Board adopted Resolution No. 2016-05 "Reestablish User
24 Fee and Suspend its Collection For Remainder of Fiscal Year 2015-16." Beginning in July 2017,
25 the District began once again collecting, via Cal-Am water bills, the same User Fee that the PUC
26 had previously disallowed from Cal-Am customers through Cal-Am water bills. This imposition
27 and collection are continuing today. Since the User Fee was reinstated in 2017, the District has
28

1 collected from Monterey residents more than \$13 million in Water Supply Charges in direct
2 violation of the Ordinance No. 152 sunset provision codified in section 10.

3 24. The District was required to reduce the Water Supply Charge in the amount of the
4 User Charge but it has not done so. The District is violating Ordinance No. 152 each time it
5 imposes the Water Supply Charge on property tax bills.

6 25. The Water Supply Charge is subject to the requirements of article XIII D, section 6
7 (Proposition 218) because it is a “fee” or “charge” as defined by section 2, subdivision (e).
8 Section 6 places constitutional limitations on the manner by which a local agency like the District
9 may impose property-related fees. Among its provisions is a requirement that the “revenues
10 derived from the fee or charge shall not be used for any purpose other than that for which the fee
11 or charge was imposed.” (See art. XIII D, § 6, subd. (b)(2).) The purpose of the Water Supply
12 Charge was to replace the then-invalid User Charge. By not reducing the Water Supply Charge by
13 the amount of the User Fee, the revenue from the Water Supply Charge is necessarily being
14 utilized for purposes other than that for which fee or charge was imposed in violation of article
15 XIII D, section 6, subdivision (b)(2).

16 **CAUSES OF ACTION**
17 **FIRST CAUSE OF ACTION**
18 **PETITION FOR WRIT OF MANDATE**
(Against All Respondents)

19 26 Petitioners refer to and incorporate by reference all preceding paragraphs as
20 though fully set forth at length herein.

21 27. There is a clear, present and ministerial duty upon the part of the Respondents to
22 comply with both Ordinance No. 152 (§ 10) and Proposition 218 (article XIII D, § 6, subd. (b)(2))
23 in connection with Respondents’ continuing imposition of the Water Supply Charge.

24 28. Respondents have failed to comply with Ordinance No. 152 (§ 10) by failing to
25 stop the collection of the Water Supply Charge to the extent alternative funds have been and are
26 now being collected via the User Fee on the Cal-Am bill that is paid by the same Monterey
27 residents who also pay the Water Supply Charge.

28 29. Respondents have failed to comply with Proposition 218 article XIII D, section 6,

1 subdivision (b)(2) by not reducing the Water Supply Charge by the amount of the User Fee and
2 thus, the revenue from the Water Supply Charge is necessarily being utilized for purposes other
3 than that for which fee or charge was imposed.

4 30. Petitioners have a clear, present and beneficial right to the performance of those
5 duties.

6 31. Petitioners do not have an adequate remedy at law.

7 32. Accordingly, Petitioners are entitled to a issuance of a writ of mandate pursuant to
8 Code of Civil Procedure section 1085 to compel the District's compliance with the law and to
9 enjoin further collection of the Water Supply Charge .

10 **SECOND CAUSE OF ACTION**
11 **DECLARATORY RELIEF**
12 **(Against All Defendants)**

13 33. Petitioners refer to and incorporate by reference all preceding paragraphs as
14 though fully set forth at length herein.

15 34. An actual, present, and substantial controversy exists between Petitioners and
16 Defendants. Petitioners contend that the District is violating Ordinance No. 152 (§ 10) and article
17 XIII D, section 6, subdivision (b)(2) by refusing to eliminate or reduce the Water Service Charge
18 to the extent of the amount collected via the User Fee. They further contend that any
19 interpretation of Ordinance No. 152 (§ 10) that allows the District to continue to collect the User
20 Fee and also collect the full amount of the Water Supply Charge is erroneous.

21 35. On information and belief, defendants contend that the District is in compliance
22 with Ordinance No. 152 (§ 10) and is not violating article XIII D, section 6, subdivision (b)(2) by
23 refusing to reduce the Water Service Charge by the amount of the User Fee. They interpret
24 Ordinance No. 152 (§ 10) in a manner that authorizes the District to continue to charge the full
25 amount of the Water Supply Charge.

26 36. Petitioners are entitled to a judicial declaration stating the parties' respective rights
27 arising from Ordinance No. 152 (§ 10) and article XIII D, section 6, subdivision (b)(2), and the
28 proper interpretation of Ordinance No. 152 (§ 10.)

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioners pray for relief and judgment against Respondents, jointly and
3 severally, as follows:

4 1. For a writ of mandate directing Respondents to cease the imposition and collection
5 of Water Supply Charge by the amount of the User Fee.

6 2. For a declaratory judgment declaring that (a) Defendants have violated, are
7 continuing to violate Ordinance No. 152 (§ 10) and article XIII D, section 6, subdivision (b),
8 subdivision (2) and (b) Ordinance No. 152 (§ 10) requires the District to reduce the Water Service
9 Charge by the amount of the User Fee.

10 3. An award of attorneys' fees and costs, including those recoverable pursuant to
11 California Code of Civil Procedure section 1021.5 and/or other applicable method of awarding
12 attorney's fees and costs; and

13 4. For any such further relief as may be permitted by law and/or that the Court deems
14 equitable, just and proper.

15
16
17 DATED: September 28, 2021

BENINK & SLAVENS, LLP.

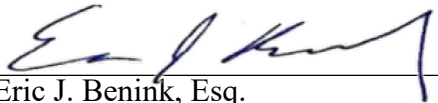
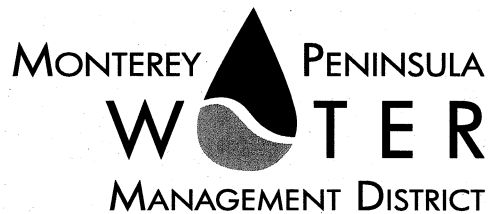
18
19 
20 Eric J. Benink, Esq.
21 Attorneys for Petitioners
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EXHIBIT A



Adopted June 27, 2012 – Effective July 1, 2012

ORDINANCE NO. 152

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
IMPOSING AN ANNUAL WATER SUPPLY CHARGE TO FUND
WATER SUPPLY SERVICES, FACILITIES AND ACTIVITIES
NEEDED TO ENSURE SUFFICIENT WATER FOR PRESENT BENEFICIAL
WATER USE IN THE MAIN CALIFORNIA AMERICAN
WATER DISTRIBUTION SYSTEM**

FINDINGS

1. The Monterey Peninsula Water Management District ("District") is organized and exists under the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977, and published at Water Code Appendix, Section 118-1, et seq.) ("District Law").
2. Pursuant to Section 325 of the District Law, and except as otherwise limited by the District Law, the District has the power to do any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including, but not limited to, irrigation, domestic, fire protection, municipal, commercial, industrial, recreational, and all other beneficial uses and purposes.
3. Section 326 of the District Law authorizes the District to fix, revise, and collect rates and charges for the services, facilities, or water furnished by it, and authorizes the District to collect its rates and charges via the tax roll or other billing methods. Section 308 of the District Law authorizes the District, by resolution or ordinance, to fix and collect rates and charges for the providing of any service it is authorized to provide.
4. The District engages in a variety of activities that supply water to properties within the District via a distribution system owned by California American Water (CAW).
5. The District delivers water via the CAW distribution system because shared use of this system is a far more cost-effective means of delivery than construction and operation of a parallel, District-owned, distribution system and no public purpose would be served by

imposing rates sufficient to fund duplicative infrastructure.

6. Water made available by District supply activities is beneficially used by the properties served in this manner, and such water, though commingled with water from CAW sources, is not purchased by CAW from the District. Accordingly, it is appropriate that the users of that water fund the costs to provide it.
7. The District has previously collected a charge from water users via a surcharge on CAW's bills.
8. State Water Resources Control Board Order No. WR 95-10 dated July 6, 1995, (the "Carmel Valley Water Ruling") determined that CAW does not have the right to divert as much water from the Carmel River system as it did historically and is presently doing. Recognizing that the loss of a substantial portion of the water supply to the Monterey Peninsula, the SWRCB authorized CAW to continue these diversion levels until 2017, at which point alternative water supplies must be made available to avoid significant threats to the health, safety and welfare of residents, businesses, visitors and property owners on the Monterey Peninsula. The urgent need to provide additional water supply to meet the needs of the people of this region is complicated by the listing of the California red-legged frog and the steelhead trout as threatened species under the federal Endangered Species Act and limitation on production from the Seaside Groundwater Basis pursuant to the Superior Court's judgment in *California American Water Company v. City of Seaside*.
9. The District no longer has access to CAW bills, and, as a result of the Carmel Valley Water ruling faces an urgent need to supplement its water supplies to continue to serve properties that rely on District water supplies.
10. The purpose of this Ordinance is to replace and augment the former charge collected by CAW on its bills to water customers with a supply charge collected from owners of parcels that receive from the District through CAW's distribution system.
11. On June 12, 2012, the District's Board of Directors held a public hearing with respect to the supply charge imposed by this Ordinance ("Hearing"). The Hearing was well attended and all persons desiring to provide oral or written testimony to the Board had opportunity to do so.
12. As required by Article XIII D, Section 6 of the California Constitution, on April 26, 2012 notice of the Hearing was mailed to the record owner of each parcel upon which the Supply Charge will be imposed. That notice included: (i) a rate table setting forth the amount of the proposed Supply Charge, (ii) the basis upon which the amount of the

Supply Charge was calculated, (iii) the reason for the Supply Charge, (iv) the date, time, and location of the Hearing and (iv) information about how to submit a written protest against the Supply Charge.

13. The District accepted written protests against the Supply Charge pursuant to the procedures established by the Board in its Resolution No. 2012-3. Following the close of public testimony at the Hearing, the Board continued its consideration of the matter to June 19, 2012 to give District staff time to tabulate protests in the manner required by Resolution No. 2012-3.
14. The District received 15,709 raw protests. Of these, 207 lacked required information or were submitted with respect to property clearly outside of the boundaries of the District; 2,114 were duplicates of valid protests; and an additional 3,045 were submitted with respect to parcels not subject to the Supply Charge. Therefore, valid protests were received with respect to 10,343 parcels subject to the Supply Charge. All protests are now public records of the District and have been considered by the Board.
15. 30,509 parcels are subject to the Supply Charge. A majority protest against the Supply Charge would therefore require 15,255 valid written protests. Therefore, a majority protest against the Supply Charge does not exist. Because this Supply Charge is a property-related charge for water service, as that term is defined by law, no election is required pursuant to Article XIII D, § 6(c) of the California Constitution and the District's compliance with Proposition 218 is complete.
16. The rate of the Supply Charge is supported by a Technical Memorandum dated April 12, 2012 prepared by the District's rate-making consultant, Bartle Wells and Associates, ("Technical Memorandum") which has been reviewed by the Board and is available for public inspection in the Office of the District.
17. The Supply Charge will fund only a portion of the District's actual costs to provide water supply services. Therefore, the Supply Charge does not exceed the funds required to provide those services.
18. Supply Charge proceeds will be expended only to fund water supply services and for no other purpose.
19. The Supply Charge is a charge upon real property. The amount of the Supply Charge imposed upon a parcel will not exceed the proportional cost of supply services attributable to the parcel for the reasons stated in the Technical Memorandum and elsewhere in the record of this rate-making.

20. Only parcels that receive water via the segments of the CAW water system that carry District-supplied water are subject to the Supply Charge. Parcels that are not connected to the system via an active meter are not subject to the Supply Charge. Parcels connected to the system via an active meter but not occupied are subject to a reduced charge to reflect the diminished service received by such properties. Consequently, supply services are actually used by, or immediately available to, the owner of each parcel that will be charged a Supply Charge.
21. This Ordinance imposes a charge for ongoing services to the existing territory of the District. Consequently, its adoption is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080(b)(8) and 14 CCR 15273.
22. Although proceeds from the Supply Charge may fund capital projects that might physically affect the environment, such capital projects will be subject to CEQA review on a project-by-project basis. Accordingly, CEQA review of the use of the proceeds of the Supply Charge would be unduly speculative at this time and therefore this action is not a "project" as the term is defined in Public Resources Code Section 21065 and 15 CCR 15002(d), 15378 and 15061(b)(3).

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This Ordinance shall be known as the 2012 Water Supply Charge Ordinance of the Monterey Peninsula Water Management District.

Section Two: Findings

The Findings above are determined to be true and correct, and are adopted as though fully set forth herein.

Section Three: Purposes

Proceeds of the charge imposed by this Ordinance may only be used to fund District water supply activities, including capital acquisition and operational costs for Aquifer Storage and Recovery (ASR) and Groundwater Replenishment (GWR) purposes, as well as studies related to project(s) necessary to ensure sufficient water is available for present beneficial water use in the main CAW system. In addition to direct costs of the projects, proceeds of this annual water supply charge may also be expended to ensure sufficient water is available for present beneficial use or uses, including water supply management, water demand management, water augmentation program expenses such as planning for, acquiring and/or reserving augmented water supply capacity, including engineering, hydrologic, legal, geologic, financial, and property acquisition, and for reserves to meet the cash-flow needs of the District and to otherwise provide for the cost to provide services for which the charge is imposed.

No more than fifteen (15%) of proceeds collected by reason of Ordinance No. 152 shall be used to fund general unallocated administrative overhead.

Section Four: Charge Imposed

The owner of each parcel of real property connected to the main CAW Water Distribution System, excluding the Bishop, Hidden Hills, Ambler, and Toro sub-units (which will not receive the service for which the charge is imposed), shall pay the District an annual water service charge. The amount of the charge on each parcel shall be calculated as set forth in Section 5 of this ordinance. This is a charge by the District to parcels on the CAW system that receive water via the CAW system that is sourced, in whole or in part, from the District's water supply activities. The charge for each fiscal year shall be due and payable on July 1 of that fiscal year. The Board of Directors may, by ordinance or resolution, change the method of collection for the charge by (i) providing that the annual charge be collected in installments over time, (ii)

providing that the charge will be collected along with property taxes on the property tax roll, or (iii) providing the charge will be billed by the District or included on the bill of any utility that consents to such inclusion. The District may set penalties for nonpayment as permitted by District Law section 326(g).

Section Five: Table of Annual Water Supply Charges by Use Category

The annual water supply charge for each parcel by user category is calculated as follows:

$$\begin{array}{c} \text{Annual} \\ \text{Water} \\ \text{Supply} \\ \text{Charge} \end{array} = \begin{array}{c} \text{Meter Fee} \\ \text{Based on} \\ \text{Meter Size} \end{array} + \left[\begin{array}{c} \text{Water} \\ \text{Usage Fee} \\ \text{Per Unit} \end{array} \times \begin{array}{c} \text{\# of} \\ \text{Units} \end{array} \right]$$

That is, the annual charge is the sum of the parcel user's meter fee based on the size of the meter (from Table 1,) and the water usage fee per unit multiplied by the number of units for that parcel use (from Table 2.) Meter size is a measure of potential demand on a water system (i.e., the volume of service a utility must be prepared to supply) and water volume is a measure of actual demand (i.e., the volume of service a utility actually supplies). Both measures are appropriately used to make charges proportionate to the cost of service attributable to a parcel. Because the District does not have access to meter readings collected by CAW at the point of delivery, it is not feasible to use metered data to calculate the volume of water served to each property; accordingly, industry-standard estimates based on the use of each parcel are employed.

Table 1: Meter Fee Based on Meter Size

Meter Size	Single-Family Residence Meter Fee	Multi-Family Meter Fee	Non-Residential Meter Fee
5/8 x 3/4"			
Small house (less than 1,200 sq ft)	\$14.31		
Medium house (1,200 to 2,000 sq ft)	\$16.84		
Medium/large house (2,000 to 4,000 sq ft)	\$19.36		
Large house (4,000 sq ft+)	\$19.36		
5/8 x 3/4" multi-family or commercial		\$12.64	\$22.57
3/4"	\$25.27	\$18.97	\$33.85
1"	\$42.10	\$31.62	\$56.42
1 1/2"	\$84.19	\$63.22	\$112.84
2"	\$134.70	\$101.15	\$180.54
3"	\$252.57	\$189.66	\$338.52
4"	\$420.95	\$316.11	\$564.20
6"	n/a	\$632.21	\$1,128.40
8"	n/a	\$1,011.54	\$1,805.43

Table 2: Water Usage Fee per Unit

Description	Water Usage Fee per Unit	Unit
Small house (less than 1,200 sq ft)	\$24.75	per single family home
Medium house (1,200 to 1,999 sq ft)	\$38.50	per single family home
Medium house (2,000 to 3,999 sq ft)	\$77.00	per single family home
Large house (4,000 sq ft+)	\$154.00	per single family home
Vacant house	50%	Of non-vacant fee
Multifamily Property	\$20.90	per multifamily unit
Business/Govt 1 to 10 employees	\$52.80	per location/each business
Business/Govt 11 to 20 employees	\$105.60	per location/each business
Business/Govt 21 to 30 employees	\$158.40	per location/each business
Rate Increases for Business/Govt	\$52.80	increase per every 10 employees
Hotel/Motel	\$32.17	per room
Bed and Breakfast	\$21.54	per room
Supermarket	\$261.42	per location/each business
Medical Office	\$45.11	per licensed physician
Dental Office	\$61.09	per licensed physician
Rest Home	\$20.03	per bed of licensed capacity
General Hospital	\$118.65	per bed of licensed capacity
Animal Hospital	\$138.98	per location/each business
Restaurant 1 meal/day	\$2.43	per seat
Restaurant 2 meals/day	\$3.79	per seat
Restaurant 3 meals/day	\$7.28	per seat
Restaurant w/bar	\$9.71	per seat
Bar	\$79.91	per location/each business
Nightclub	\$233.45	per location/each business
Takeout Food - small	\$82.39	1 cash register or checkout lane
Takeout Food - medium	\$211.66	2 or 3 cash registers or checkout lanes
Takeout Food - large	\$372.03	4+ cash registers or checkout lanes
Bakery	\$101.81	per location/each business
Theater	\$109.24	per screen
Bowling Center	\$491.59	per location/each business
Gym	\$52.80	per 500 members
Mortuary	\$128.06	per location/each business
School Minimum	\$52.80	per location
School (Grades 0-6)	\$0.91	per student
School (Grades 7- college)	\$1.82	per student
Boarding School	\$23.21	per student
Instructional Facility	\$52.80	per location/each business
Church (0 to 100 members)	\$52.80	per location
Church (over 100 members)	\$105.60	per location
Photo Developer	\$52.80	per location
Laboratory	\$52.80	per 10 employees
Printer	\$52.80	per 10 employees
Service Station	\$52.80	per 10 employees
Auto Painters/Body Shop	\$52.80	per location
Rate Increases for Previous 4 Categories	\$52.80	increase per every 10 employees
Dry Cleaner	\$67.49	per location/each business
Laundromat	\$21.24	per each washing machine
Mobile Home	\$32.17	per living unit
Golf Course/City Parks/Cemeteries/Other Irrigated Area	\$105.60	per acre
Vacant Commercial	\$26.40	per location/each business
Temporarily Suspended (no active meter)	\$0	per location/each business
Special Users (determined individually)	\$52.80	Fee proportional to average business user, not to exceed \$2500.

Section Six: Administrative Review and Appeals

A. Purpose for Review. The General Manager is directed to administer a process to enable administrative review and appeals to remedy potential error in the allocation of the annual water supply charge imposed by this ordinance, to enable property to be reclassified to a different use category as appropriate, to consider unique circumstances, or to otherwise reduce or waive the water supply charge when warranted to ensure the charge is fair, reasonable and proportional to the cost of service attributable to the parcel on which the charge is imposed. Any property owner or charge payor may submit a claim to request an exemption, in full or in part, from charges imposed by this ordinance in the manner provided below.

B. Claim Presentation. Any claim under this section shall be signed by the claimant or by some person on his or her behalf and verified by the claimant or by claimant's guardian, conservator, executor or administrator. Each claim shall be presented to the District by personal delivery or mail to the General Manager. Each claim shall set forth:

- (1) The name and address of the claimant;
- (2) The address to which the person presenting the claim desires notices to be sent;
- (3) The circumstances which gave rise to the claim;
- (4) The street address(es) and Assessor's Parcel Number(s) (APN) of each property to which the claim may be applicable;
- (5) The facts to demonstrate that (i) an error has been made in the allocation of the charge imposed by this ordinance, (ii) it is appropriate to reclassify a parcel to a different use category, (iii) unique circumstances require adjustment of the charge so that it is proportionate to the cost of providing the service attributable to the parcel, (iv) the charge charged is not reasonable, fair, and proportional to the cost of service attributable to the parcel, or (v) that water service for which the charge is imposed is not actually used by or immediately available to the property in question.
- (6) The verified signature of each claimant (or the signature of each claimant's guardian, executor, conservator, or administrator) together with a contemporaneous statement that the information on the claim has been provided under penalty of perjury;
- (7) Any claim filed on behalf of more than one person shall be verified by each person on behalf of whom the claim is filed or by claimant's guardian, conservator, executor or administrator;
- (8) Any claim to recover money previously paid to the District may be filed by any person or the person's guardian, executor, conservator or administrator only if the payment, at the time it was first tendered, had been accompanied by a written statement, signed by the claimant or claimant's guardian, executor, conservator or administrator which states that the payment was made under protest, or other basis, providing notice to District that the

payment was contested. This provision shall not be construed to relieve any person of the obligation to make full payment of any money due to the District.

C. Class or Representative Claims. No claim may be filed on behalf of a class of claimants, or on behalf of any person other than the person filing the claim, unless the membership of the class is identified with particularity; and unless the verified signature of each member of the class (or the signature of each class member's guardian, executor, conservator, or administrator) is appended to the claim; and that any claim filed on behalf of a class of claimants shall be further limited to persons who have tendered payments under written protest during the 365 days immediately preceding the filing of the class claim.

D. Untimely Claims. No refund of any charge shall be allowed unless the amount paid was tendered together with written protest filed with the District by claimant or by claimant's guardian, executor, conservator. No refund of any charge shall occur for charges paid more than 365 days prior to the date of the claim.

E. Time of Presentation and Receipt. A claim for recovery of any money paid under protest shall be filed in writing with the District by claimant or by claimant's guardian, executor, conservator, or administrator no later than 365 days after the date the payment was made.

F. Notice of Insufficiency. If, the General Manager, or his or her designee, determines that a claim, as presented, fails to comply substantially with the requirements of this chapter, the General Manager or his or her designee may, at any time within 30 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omission therein. Failure of the District to provide notice of insufficiency shall not operate as a waiver of any defenses the District may have based on the sufficiency of the claim.

G. Initial Review. Each claim shall be screened by the General Manager or his or her designee within 30 days after the claim has been determined to be sufficient. At this initial review and without conducting a hearing, the General Manager or his or her designee may act to adjust the charge in full or in part, as warranted, upon determining facts support the adjustment under the standards of subparagraph B.(5) of this section.

H. Administrative Hearing. For those circumstances where the Initial Review does not resolve the claim, the General Manager or his or her designee shall convene a hearing, following 15 days written notice to the claimant, to review facts and issues supporting the claim. After the hearing, the General Manager shall take the matter under submission and thereafter render a written decision, based on substantial evidence presented at the hearing, to adjust the charge in full or in part, or to deny the claim. Written notice of this decision shall be delivered to the claimant.

Notice shall be mailed to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice to be sent. If no such address is given, notice may be mailed to any address the claimant sets forth in the claim or otherwise known to the District.

I. Administrative Appeal. Any claimant may contest the decision of the General Manager, and request a hearing de novo before the District board of directors, by submitting a written request within 15 calendar days after the date the General Manager's decision was provided to the claimant. At its next regular meeting, or at such other time that may be set by action of the board of directors, the board shall convene a hearing to review facts and issues supporting the claim and based on substantial evidence presented at the hearing may adjust the charge, in full or in part, or may deny the claim. Written notice of this decision shall be delivered in the same manner as required for notice of the Administrative Hearing, provided the Notice shall further advise the claimant that District Rule 16 and the California Code of Civil Procedure §1094.6 govern the time within which judicial review must be sought of this decision.

J. Limitations. No suit for the recovery of any charge paid or owing by any person against the District shall be filed in any court of law unless a claim has first been filed and rejected in accord with the provisions of this ordinance.

K. Time-barred Claims. This ordinance shall not be construed to revive or reinstate any cause of action that, on the effective date of this ordinance, is barred by failure to comply with any applicable statute, ordinance or regulation requiring the presentation of a claim prior to a suit for recovery of money or damages, or by the failure to commence any action thereon within the period described by applicable statute of limitations. No provision of this ordinance shall authorize payment of untimely claims.

Section Seven: Collection of Delinquent Payment, Costs and Penalties

A. Dependent upon the collection method(s) selected by the District Board, which may be enabled by District resolution or ordinance and which may be modified from time to time, payment schedules may be available for the annual water supply charge enabled by this Ordinance.

B. Except when allowed pursuant to an authorized installment payment schedule, if all or part of the charge is not paid on its due date, (a) the District may discontinue any or all services or facilities for which the bill is rendered; (b) a basic penalty of 10 percent shall be imposed for delinquent payment; (c) a penalty of one-half of 1 percent per month shall be imposed for nonpayment of the charges and the basic penalty; and (d) collection of the charge and penalties the District may be made as a lien upon the real property and collectible at the same time and in

the same manner as taxes and assessments are so collected upon such real property in accord with District law. In addition, the charge imposed by this ordinance, together with penalties and interest at the legal rate thereon, constitute a debt owed to the District by the owner and occupants, jointly and severally, of the property to which the service is provided and the District may sue on that debt in any court of competent jurisdiction. Remedies for collection and enforcement are cumulative, and may be pursued alternatively or consecutively by the General Manager. The District may, from time to time, adopt by resolution or ordinance such other penalties and delinquency collection mechanisms allowed by law.

Section Eight: Publication and Application

This Ordinance shall not cause amendment or republication of the permanent Rules and Regulations of the Monterey Peninsula Water Management District. This Ordinance shall be read in conjunction with and complement those provisions of the District's Rules and Regulations. All definitions used in the District Rules and Regulations shall apply to this Ordinance.

Section Nine: Citizen's Oversight Panel

Within sixty days of the effective date of this ordinance, the District Board shall create a nine member "Ordinance 152 Citizen's Oversight Panel" as an advisory board to the Board of Directors. Members of the Panel shall serve at the pleasure of the District Board, and shall be appointed as follows: the Board shall appoint one member from a panel of three persons nominated by the Monterey Peninsula Taxpayers Association, and the Board shall appoint one member from a panel of three persons nominated by the Monterey County Association of Realtors, and each Director shall appoint one member.

The District Board shall adopt bylaws for the Panel which shall ensure the Panel meets on a quarterly basis, as needed, and that its meetings comply with the Ralph M. Brown Act. Duties of the Panel shall be limited to issuing an annual report and providing advice to the District Board. Expenditure of funds or use of staff resources shall require approval of the District Board.

Section Ten: Effective Date; Review Requirement; Sunset

A. This Ordinance shall take effect at 12:01 a.m. on July 1, 2012. This Ordinance shall not have a sunset date, provided however, that charges set by this Ordinance shall not be collected to the extent proceeds exceed funds required to achieve the Purposes of this Ordinance, as set forth in Section Three or as described in the Findings referenced in Section Two.

B. So long as this annual water supply charge is collected, the Board of Directors shall hold a public hearing each calendar year in connection with review of the annual District budget. At that time, the Board shall review amounts collected and expended in relation to the purposes for which the charge is imposed. The District shall require the annual water supply charge to sunset in full or in part unless the Board determines that the purpose of the charge is still required, and the amount of the charge is still appropriate and less than the proportionate cost of the service attributable to each parcel on which the charge is imposed. If the purpose is fully accomplished, the charge shall be required to sunset. If the purpose for the charge is determined to continue, but amounts needed to fund that purpose are decreased, the charge shall be reduced to that lesser amount. In the event aggregate annual charge collections are insufficient to fund all appropriate purposes to which the charge may be expended, the Board may determine, in its sole discretion, the extent to which any purpose or purposes shall be funded provided that the charge does not exceed the proportionate cost of the service attributable to each parcel on which the charge is imposed.

C. Notwithstanding any other provision of this Ordinance, the District shall not collect a water supply charge pursuant to this Ordinance: (a) in Fiscal Year 2018-19 (or any subsequent fiscal year) if no District project is identified and determined by the Board of Directors to have been underway as of December 31, 2017, (b) to the extent alternative funds are available via a charge collected on the California American Water Company bill, or (c) to the extent the Board of Directors determines that the charge (or portion thereof) is no longer required because bonds financing a specific project having been repaid.

Section Eleven: Delegation

The General Manager is directed to execute all documents and perform all tasks necessary to implement the effect and purpose of this Ordinance. The delegation of authority extends to billing and collection of the charge enacted herein, together with collection of charges and penalties for non-payment. The delegation of authority also authorizes the General Manager to tender payment on any claim for money previously paid to the District filed in accord with this ordinance, if approved according to the terms provided herein.

Section Twelve: Severability

If any subdivision, paragraph, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this Ordinance, or of any other provisions of the District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more

subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

Section Thirteen: Limitation on Modification

No subdivision, paragraph, sentence, clause or phrase of this Ordinance shall, for any reason, be amended by the District Board unless the District Board: (a) conducts a hearing on the proposed amendment, (b) causes mailed notice of the hearing to be given in the manner set forth in Article XIII D of the California Constitution, (c) accepts protests against the amendment in the manner set forth in Article XIII D of the California Constitution, and (d) determines that a majority protest to the modification does not exist. Notwithstanding the foregoing, the District Board may, without complying with the foregoing sentence, amend this Ordinance to (i) temporarily suspend the Supply Charge, (ii) reduce the rate of the Supply Charge, or (iii) repeal this ordinance in its entirety. Furthermore, nothing in this paragraph shall be construed to create notice, protest or hearing rights (if not otherwise created by state or federal law) with respect to any action taken by the Board of Directors for the purpose of complying with any (i) court order, (ii) published appellate court or federal court decision (including a decision in a case to which the District is not a party), (iii) change in statutory law, or (iv) amendment to the California or federal constitutions.

On motion by Director Brower, and second by Director Markey, the foregoing Ordinance is adopted upon this 27th day of June 2012, by the following vote:

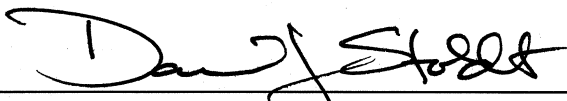
AYES: Brower, Markey, Byrne, Lehman, Lewis, Pendergrass

NAYS: Potter

ABSENT: None

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the 27th day of June 2012.

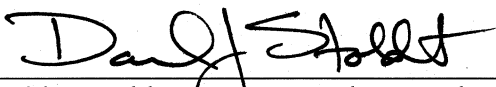
Witness my hand and seal of the Board of Directors this 27th day of June 2012.



David J. Stoldt, Secretary to the Board

COPY CERTIFICATION

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of Ordinance No. 152 duly adopted on the 27th of June, 2012.



David J. Stoldt, Secretary to the Board

6-28-12
Date

EXHIBIT B



Annual Water Supply Charge

Frequently Asked Questions

1. Why is this charge needed?

- a. When the California Public Utilities Commission (CPUC) took away the collection of the MPWMD user fee through the Cal Am bill, the District was left with a \$3.7 million gap in its budget – approximately 46 percent of the total annual budget. Without a replacement of that revenue source, the District does not have the ability to fund development of much-needed water supply projects.

2. What was wrong with the old user fee and collection method?

- a. The CPUC disallowed the collection of the District's user fee to be passed through on the Cal Am bill. The judge agreed that the user fee was legal, but stated that she would disallow the charge to be collected on the Cal Am bill.

3. What will this charge support?

- a. Revenue collected from the annual water supply charge will fund the District's water supply activities, including capital acquisition and operational costs for Aquifer Storage and Recovery (ASR), Groundwater Replenishment (GWR), and related water supply purposes. Funds may be used for water supply management, water demand management, and water augmentation programs related to the provision of water. No more than 15 percent of proceeds shall be used to fund general unallocated administrative overhead costs.

4. Who will be charged?

- a. The charge will be assessed to the properties within the District boundaries that are served by the Cal Am "main system," as the water supply projects to be supported by this charge will provide present beneficial water use only to customers connected to the main system. At this time, the various Cal Am sub-units are exempt.

5. How is customer data collected and what if a customer is wrongly charged?

- a. The District is using property and customer data from the county, Cal Am, Monterey Regional Water Pollution Control Agency (MRWPCA) and Carmel Area Wastewater District (CAWD) to determine the categories of water users and the charge amount. Should a property owner be billed in error, the District has created an appeal process.

6. How will your projects benefit the community and reduce cost of desal?

- a. The projects funded through this fee are needed to address the reduction in production allowed from the adjudicated Seaside Groundwater Basin and will assist Cal Am in

offsetting its reduction in production of water from the Carmel River as mandated by State Order 95-10. These projects will reduce the overall size and cost of desalination.

7. How can we be assured this charge will not go toward Carmel River mitigation programs or overhead costs?

- a. The fee ordinance specifically states “Proceeds of the charge imposed by this Ordinance may only be used to fund District water supply activities, including capital acquisition and operational costs for Aquifer Storage and Recovery and Groundwater Replenishment purposes.” Additionally, the ordinance specifies that no more than 15 percent of proceeds collected may be used to fund general unallocated administrative overhead costs. Finally, the board will annually review the amounts collected and expended to ensure they are in relation to the purpose for which the fee was originally enacted.

8. How will mitigation be funded if the new charge is supporting water supply?

- a. The District is seeking to have Cal Am pay a greater portion of mitigation costs. Currently, Cal Am has agreed to fund at least \$1.6 million of the annual program costs through 2014. The remainder of mitigation costs will be covered through the District’s other revenue sources.

9. Why don’t you just stop mitigation?

- a. MPWMD’s 1990 Allocation Environmental Impact Report (EIR) required river mitigation as a responsibility of the District. Further, the ASR EIR also required certain mitigation for the project to go forward. The operating permit for ASR also states certain requirements that are embodied in the Mitigation Program. Additionally, Cal Am has repeatedly stated that MPWMD is best equipped to carry out the Mitigation Program in a cost-effective manner due to the District staff’s expertise and experience. For more on the requirements for a mitigation program, read the [“White Paper on MPWMD Mitigation Program”](#) available on the District’s website.

10. Why doesn’t Cal Am cover the costs of water supply projects?

- a. Cal Am is committed to covering the costs of the second and third phase of ASR. The District will fund the remainder of phase one and a possible fourth phase of ASR. By having the District fund these phases of ASR, as well as the GWR project, we are able to access better tax-exempt market rates for financing, thereby lowering the overall cost for ratepayers. If Cal Am were to develop the same projects as the District, the costs recovered through its ratepayers would be significantly higher.

11. What costs is the District cutting?

- a. About 45 percent of the District’s budget is comprised of grants and reimbursements. The remainder of the budget has remained around \$5 million, including a budgeted \$3.7 from user fees, for the last ten years. As the District entered the latest budget cycle, excess costs were closely scrutinized. The District has already reduced staff costs by leaving some upper-level positions vacant in the past 18 months. Furthermore, we are reducing mitigation program costs by having Cal Am pay a greater portion.

12. How were these new rates or charges developed?

- a. The District retained a rate consultant who determined fair allocation of fees based on meter size and allocated water usage by parcel type and category. The annual water supply charge is based 30 percent on meter size and 70 percent on water consumption. This was done using industry accepted usage factors and is consistent with California Urban Water Conservation Council's best management practices. The charge could not be based on actual water consumption as that data belongs to California American Water and is considered to be confidential.

13. How will MPWMD collect the charge?

- a. The District evaluated various collection methods, to include direct billing and third-party billing. In June, the Board of Directors voted to contract with the county assessor to bill on the semi-annual assessor's roll billing. Collecting on the county assessor's bill is the least expensive and most secure method.

14. Is there a sunset date for the charge?

- a. The rate ordinance specifies that the fee will be required to sunset when the purpose for the fee no longer exists. The Board will hold a public hearing each year to review collection and expenditures related to the fee's purpose, at which time the Board may elect to decrease or eliminate the fee as required. The rate ordinance also specifies that the District shall not collect a water supply charge in 2018-19, or any subsequent year, if no project is identified and underway by Dec. 31, 2017. Additionally, no supply charge shall be collected if alternative funds become available via a charge on the Cal Am bill.

15. What legal right does District have to enact such a charge?

- a. The District's enabling legislation, which is part of the State Water Code, authorizes such rates and charges to be assessed and collected. Other sections of State Government Code and Health and Safety Code also authorize the District to collect rates and charges. Additionally, Proposition 218 governs the ability of the District to raise or change the water supply charge.

16. How is this fee covered under Prop 218?

- a. Proposition 218 distinguishes between three types of financing tools: taxes, fees and assessments. MPWMD's charge is classified as a "fee" under Prop 218. Under Prop 218 definitions, a fee "may be imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user charges for a property-related service." Fees can include: direct and indirect expenses to operate, purchased water, O&M expenses, repair and replacement, capital improvements, regulatory compliance, and to build cash reserves.

17. How did the protest vote work?

- a. Under Proposition 218 law, affected property owners were notified of the proposed fee and given 45 days to submit one protest for each parcel owned. A public hearing on the matter was held June 12 where the District Board heard from the public and closed the period for submitting protests against the fee. A majority protest to defeat the charge

would have required 15,255 protest letters from the eligible 30,509 property owners. The fee passed with 10,343 eligible protests submitted.

18. Why not let the community vote on the charge enactment?

- a. As outlined in Prop 218, fees for water, sewer and garbage services are subject to the Prop 218 notice, hearing and majority protest procedures and are specifically exempt from the voter approval requirement. Furthermore, the District has taken project initiatives to a public vote in the past when it was not legally required to do so. In those cases, the public voted down two water supply projects – a dam and a desal project. With the State’s Cease and Desist Order deadline looming, the District cannot risk any more water supply projects to the non-mandated voter approval process. The District must work within the recommended limits of the law.

19. How was the community notified of this charge?

- a. On April 27th, the District mailed notice to affected property notifying them of the public hearing and outlining the reasons for the proposed fee, calculation of rates, and instructions on how to protest. This information was also available on the District’s website. In addition, the District met with various community organizations and gave presentations to the city councils throughout the months of April and May.

20. What other options does the district have for financing its costs?

- a. Other MPWMD revenue sources include certain property tax allocations, connection charges, permit fees, reimbursements from other entities, and interest earnings, plus temporary borrowing from a line of credit and use of previously funded reserves. The District has effectively depleted its reserves – this is not an option for future financing. The other sources do not generate enough revenue to fund development of water supply.

21. What happens if the District doesn’t collect this fee?

- a. The District has looked at redirecting expenditures from mitigation and conservation programs, as well as furloughs and lay-offs to fund for water supply projects. However, these actions cannot easily be accommodated without potentially disrupting legally mandated requirements or leaving grant-funded or reimbursed programs unserved, resulting in future potential liabilities. In fact, the ability to meet the permit requirements for operation of the ASR water supply project would come into question. Without the water supply charge, the District will not have sufficient funds to pay for water supply facilities and related water supply expenditures.

22. How can I get more information?

- a. The notice of public hearing, rate study, rate ordinance, fact sheets and other related documents are available on the District’s webpage at www.mpwmd.net. Click on the ‘Information on Annual Water Supply Charge’ link under Important Announcements. District staff and board members are also available to speak to your organization. To request a presentation, contact Rachel Martinez, the District’s community relations liaison, at 658-5653.

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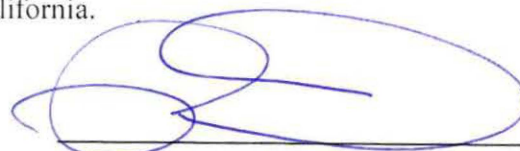
VERIFICATION

I, Richards J. Heuer, III, have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and know the contents thereof. I am the duly-elected President of Monterey Peninsula Taxpayers' Association, Inc. (MPTA) and make this verification in such capacity. With respect to the matters about MPTA, the matters stated therein are true based on my personal knowledge. With respect to the remaining allegations, I believe them to be true based on the investigation of MPTA's attorneys.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in the County of Monterey, California.

Dated: 09/28/2021



Richards J. Heuer, III, President
Monterey Peninsula Taxpayers'
Association, Inc.

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Richards J. Heuer, III